

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LHF PRODUCTIONS, INC.,

Plaintiff,

v.

CALVIN EVANS, an individual;
JOSE SOSA, an individual;
RAUL FERNANDEZ, an individual;
AMY JOHNSTON, an individual;
DAVID NARDIN, an individual;
PAMELA LAKE, an individual;
AARON ROSENBERG; an individual; and
ALEJANDRA DEL ANGEL; an individual;

Defendants.

Civil Action No. 16-cv-1273RSM

OPPOSITION TO MOTION TO DISMISS

Plaintiff respectfully opposes Defendant Jose Sosa's (aka Doe 2) motion to dismiss. Defendant fails to specify on which of the available bases under Rule 12(b) he seeks dismissal, asserting only a general denial of the copyright infringement claim. Plaintiff submits that, based on the information and arguments presented, there is no basis under Rule 12(b) for dismissal of its claim.

Subject Matter Jurisdiction. When the complaint is challenged for lack of subject matter jurisdiction on its face, all material allegations in the complaint will be taken as true and construed in the light most favorable to the plaintiff. *NL Indus. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).



1 Plaintiff unambiguously pled that it is the copyright owner of *London Has Fallen* motion picture,
 2 and that it secured federal copyright protection. These factual allegations, which must be taken as
 3 true, establish that Plaintiff is the “legal or beneficial owner of an exclusive rights under
 4 copyright.” 17 U.S.C. 501(b). This Court has jurisdiction under 17 U.S.C. § 101 et seq.;
 5 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

6 ***Personal Jurisdiction.*** Plaintiff asserted that Defendant resides within this judicial district.
 7 That assertion has not been challenged.

8 ***Improper Venue.*** Defendant does not challenge that venue in this District is proper under
 9 28 U.S.C. § 1391(b) and/or 28 U.S.C. §1400(a). Again, Defendant does not challenge that he is
 10 properly found in this District and/or that a substantial part of the acts of infringement complained
 11 of herein occurred in this District.

12 ***Insufficient Process/Service of Process.*** Defendant did not return the requested waiver of
 13 service, and was therefore served with a copy of the summons and amended complaint on
 14 December 16, 2017. (Dkt. 28) Service was proper and Defendant has not challenged the
 15 sufficiency of service.

16 ***Failure to State a Claim.*** A complaint fails to state a claim upon which relief may be
 17 granted if the plaintiff fails to allege the “grounds” of his “entitlement to relief.” *Bell Atlantic Corp.*
 18 *v. Twombly*, 550 U.S. 544, 555 (2007). A plaintiff must plead “factual content that allows the court
 19 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*
 20 *v. Iqbal*, 556 U.S. 662, 678 (2009). A court should only dismiss a complaint for failure to state a
 21 claim if, taking all factual allegations as true, it does not contain “enough facts to state a claim to
 22 relief that is plausible on its face.” *Id.* at 662; *see also Coto Settlement v. Eisenberg*,
 23 593 F.3d 1031, 1034 (9th Cir. 2010). “A claim has facial plausibility when the plaintiff pleads
 24 factual content that allows the court to draw the reasonable inference that the defendant is liable
 25 for the misconduct alleged.” *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 812
 26 (9th Cir. 2010). This standard is not, however, akin to a “probability requirement.” Rather, it only

1 asks for “more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*,
 2 556 U.S. at 678.

3 Plaintiff readily surpasses this modest threshold for notice pleading of its copyright
 4 infringement claim against Defendant. To state a claim for copyright infringement, a plaintiff must
 5 show “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that
 6 are original.” *Feist Publ’ns, Inc. v. Rural Tel. Servs. Co.*, 499 U.S. 340, 361, 111 S. Ct. 1282, 113
 7 L. Ed. 2d 358 (1991). Plaintiff unequivocally alleged both in its complaint, which allegations must
 8 be taken as true. (Dkt. 10, ¶¶ 6-8, 10-17, 19) These factual assertions are neither “formulaic
 9 recitation of the elements” or “bare legal conclusion,” but rather specifically allege that Defendant
 10 copied Plaintiff’s work. They provide fair notice of the infringed copyright and how the
 11 unauthorized copying occurred. Plaintiff’s infringement claim is “plausible on its face,” and
 12 readily pass the *Twombly/Iqbal* standard for notice pleading.

13 ***Failure to Joint a Party.*** Defendant has made no such claim.

14 For the reasons set forth above, Plaintiff respectfully request that Defendant’s motion be
 15 DENIED.

16 RESPECTFULLY SUBMITTED this 23rd day of January, 2017.

17 s/David A. Lowe, WSBA No. 24,453

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served to all counsel or parties of record who are deemed to have consented to electronic service via the Court's CM/ECF system, and on Michael Wilson at his last known address as follows:

Jose Sosa
5111 119th Pl. SE
Everett, WA 98208

s/ David A. Lowe

